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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

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No.

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JACK BLANTON, Petitioner,

versus,

STATE OF SOUTH CAROLINA, Respondent.

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# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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T. TRAVIS MEDLOCK
Attorney General

HAROLD M. COOMBS, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, S.C. 29211

ATTORNEYS FOR RESPONDENT.

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## QUESTION PRESENTED

Did the trial judge err in his denial of the Petitioner's motion for a jury trial on the charge of contempt of court?

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## OPINION BELOW

The opinion of the South Carolina Supreme Court is reported in Opinion No. 21843, filed January 4, 1983, as reproduced in Petitioner's Appendix A at pages 11-14.

## JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

## QUESTION PRESENTED

Did the trial judge err in his denial of the Petitioner's motion for a jury trial on the charge of contempt of court?

## ARGUMENT

The trial judge did not err in his denial of the Petitioner's motion for a jury trial on the charge of contempt of court.

The Petitioner was convicted on April 23, 1982, of contempt of court and sentenced to confinement for a period of four (4) months. The South Carolina Supreme Court held (Petition, pp. 11-12) and the Petitioner admitted (Petition, p. 3) that the Petitioner was tried for common law contempt of court, rather than a statutory violation. It should be pointed out that in his brief to the South Carolina Supreme Court, the Petitioner conceded that he would have

had no right to a jury trial had he been convicted of criminal contempt under the common law:

> "It is conceded by the Appellant that in the event he had been charged with criminal contempt under the common law of this State, he would not have been entitled to a jury trial as the possible sentence could not have exceeded six (6) months confinement." Brief of Appellant, pp. 6-7.

The courts of South Carolina have traditionally had the inherent power to convict for contempt of court as long as the accused was given a chance to be heard. State v. Weinberg, 229 S.C. 286, 92 S.E.2d 842 (1956); State v. Goff, 228 S.C. 17, 88 S.E.2d 788 (1955). While the Constitution of the State of South Carolina, Article I, §14, gives a right to a trial by jury, this right only extends to cases in which there was a right to jury trial at the time the

constitution was adopted. Commissioners v. Seabrook, 33 S.C.L. 560 (1846); State v. Gibbes, 109 S.C. 135, 95 S.E. 346 (1918); Richards v. Columbia, 227 S.C. 538, 88 S.E.2d 683 (1955); Pelfrey v. Bank of Greer, 270 S.C. 891, 244 S.E.2d 315 (1978). At the time of the adoption of the constitution, there was no right to a jury trial for contempt of court. Bloom v. Illinois, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968); 50 C.J.S., Juries, §79 (1947).

This Court has held that there is no federal constitutional right to a jury trial for "petty" crimes. Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216, 88 S.Ct. 1472, 20 L.Ed.2d 538 (1968); Bloom v. Illinois, supra; Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 1412 (1968); Cheff v. Schanackenberg, 283 U.S. 272, 86 S.Ct. 1523, 16 L.Ed.2d 629 (1966). Criminal

contempt of court is like any other crime in that there is a right to a jury trial for serious offenses, but not for petty offenses. "By deciding to treat criminal contempt like other crimes insofar as the right to a jury trial is concerned, we similarly place it under the rule that petty crimes need not be tried to a jury." Bloom, 391 U.S. at 210, 20 L.Ed.2d at 553.

In Bloom, the Court made it clear that contempt of court is a petty offense unless the punishment given makes it a serious offense. 391 U.S. at 197, 20 L.Ed.2d at 526. A serious offense is one for which the sentence is more than six (6) months; if the sentence is six (6) months or less, the offense is petty. Codispoti v. Pennsylvania, 418 U.S. 506, 94 S.Ct. 2687, 41 L.Ed.2d 912 (1974).

In Bloom, the Court went on to say, "[u]nder the rule in Cheff, when the legislature has not expressed a judgment as to the seriousness of an offense by fixing a maximum penalty which may be imposed, we are to look at the penalty actually imposed as the best evidence of the seriousness of the offense." 391 U.S. at 211, 20 L.Ed.2d at 534. In Codispoti v. Pennsylvania, supra, the United States Supreme commented on Bloom, saying:

> Although the judgment about the seriousness of the crime is normally heavily influenced by the penalty authorized by the legislature, the court held that where no legislative penalty is specified and sentence is left to the discretion of the jury, as is often true in the case of criminal contempt, the pettiness or seriousness of the contempt will be judged by the penalty actually imposed. 418 U.S. at 511, 41 L.Ed.2d at 919.

In South Carolina the legislature has set no specific maximum punishment for common law contempt of court, but has left the sentence up to the judge's discretion. South Carolina Code Ann. §14-15-320 (1976). Thus, the relevant sentence is the sentence actually imposed. Codispoti, supra; Bloom, supra; Cheff, supra. In this case, the sentence was four (4) months, which is well within the "petty offense" limit. Further, it was agreed at the beginning of the trial that the maximum sentence sought by the prosecutor would be six (6) months. (Petition, p. 4).

The Respondent respectfully submits that the holding of the South Carolina Supreme Court in this case did not deny the Petitioner any of his constitutional rights, and that the Petitioner is not entitled to a Writ of Certiorari.

## CONCLUSION

For the foregoing reasons, Respondent submits that Petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

T. TRAVIS MEDLOCK
Attorney General

HAROLD M. COOMBS, JR.
Assistant Attorney General

ATTORNEYS FOR RESPONDENT.